

Fiscal Law Overview

MAJ Mike Norris



Agenda

- Intro
- Purpose-Time-Amount
- Specific Contracting Issues

What Is Fiscal Law?

“Fiscal,” not “Physical”



What Is Fiscal Law?

- “Fisc” – A royal or state treasury; exchequer.
- The law of a government’s money.
- Congress controlling how we spend money.

U.S. Constitution

“Congress shall have the power to lay and collect Taxes, Duties, Imports, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States,

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" . . . U.S. CONST., art. I, § 8, cl. 1



U.S. Constitution

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“No Money shall be drawn from
the Treasury but in Consequence
of an Appropriation made by
Law”

-- U.S. CONST., art. I, § 9, cl. 7

The Fiscal Philosophy

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“The established rule is that the expenditure of public funds is proper only when authorized by Congress, **not** that public funds may be expended unless prohibited by Congress.”

-- *United States v. MacCollom*, 426 U.S. 317 (1976).



Procurement Law Philosophy

“If a policy or procedure, or a particular strategy or practice, is in the best interest of the government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the team to innovate”

-- FAR 1.102-4(e).



With Fiscal Law, Don't Think Outside the Box!



Fiscal Law: The Big Picture

Congress controlling how we spend money.

Purpose: What we can buy with particular funds.

Time: For what period of time we can obligate the money.

Amount: How much we can spend.

Fiscal Law: The Big Picture

U.S. Constitution

Congress (Power of the Purse)

PURPOSE

31 U.S.C. 1301(a)

Necessary Expense

TIME Bona Fide Need 31 U.S.C. 1552, 1344

AMOUNT

Antideficiency Act

31 U.S.C. 1341-44, 1511-17

Analyzing Fiscal Issues

- What is the mission/requirement?
 - Are you using the right “color” of money?
 - Are you using correct FY money?
 - Do you have enough money?

PURCHASE REQUEST AND COMMITMENT

For use of this form, see AR 37-1; the proponent agency is OASA(FM).

| | | | | | |
|--|---|----------------------------|---|--|--|
| PURCHASE REQUEST AND COMMITMENT For use of this form, see AR 37-1; the proponent agency is OASA(FM). | | 1. PURCHASE INSTRUMENT NO. | 2. REQUISITION NO. | 3. DATE | PAGE OF PAGES |
| 4. TO: | | 5. THRU: | | 6. FROM: | |
| It is requested that the supplies and services enumerated below or on attached list be: | | | | | |
| 7. PURCHASED FOR | | 8. DELIVERED TO | | | 9. NOT LATER THAN (Date) |
| The supplies and services listed below cannot be secured through normal supply channels or other Army supply sources in the immediate vicinity, and their procurement will not violate existing regulations pertaining to local purchases for stock, therefore, local procurement is necessary for the following reason: <i>(Check appropriate box and complete item.)</i> | | | | 10. NAME OF PERSON TO CALL FOR ADDITIONAL INFORMATION | 11. TELEPHONE NUMBER |
| | 12. LOCAL PURCHASES AUTHORIZED AS THE NORMAL MEANS OF SUPPLY FOR THE FOREGOING BY | | 13. REQUISITIONING DISCLOSES NONAVAILABILITY OF ITEMS AND LOCAL PURCHASE IS AUTHORIZED BY | | FUND CERTIFICATION The supplies and services listed on this request are properly chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof, and funds have been committed. |
| EMERGENCY SITUATION PRECLUDES USE OF REQUISITION CHANNELS FOR SECURING ITEM | | | | | |
| 14. ITEM | 15. DESCRIPTION OF SUPPLY OR SERVICES | 16. QUANTITY | 17. UNIT | 18. ESTIMATED | |
| | | | | UNIT PRICE <i>a</i> | TOTAL COST <i>b</i> |
| 1 | | | | | |
| 25. THE FOREGOING ITEMS ARE REQUIRED NOT LATER THAN AS INDICATED ABOVE FOR THE FOLLOWING PURPOSE | | | | 26. DELIVERY REQUIREMENTS ARE MORE THAN 7 DAYS REQUIRED TO INSPECT AND ACCEPT THE REQUESTED GOODS OR SERVICES? YES <input type="checkbox"/> NO <input type="checkbox"/> | |
| 27. TYPED NAME AND GRADE OF INITIATING OFFICER | | 28. SIGNATURE | | 29. DATE | IF YES, NUMBER OF DAYS REQUIRED: |
| 30. TELEPHONE NUMBER | | | | 34. TYPED NAME AND GRADE OF APPROVING OFFICER OR DESIGNEE | 35. SIGNATURE |
| 31. TYPED NAME AND GRADE OF SUPPLY OFFICER | | 32. SIGNATURE | 33. DATE | | |

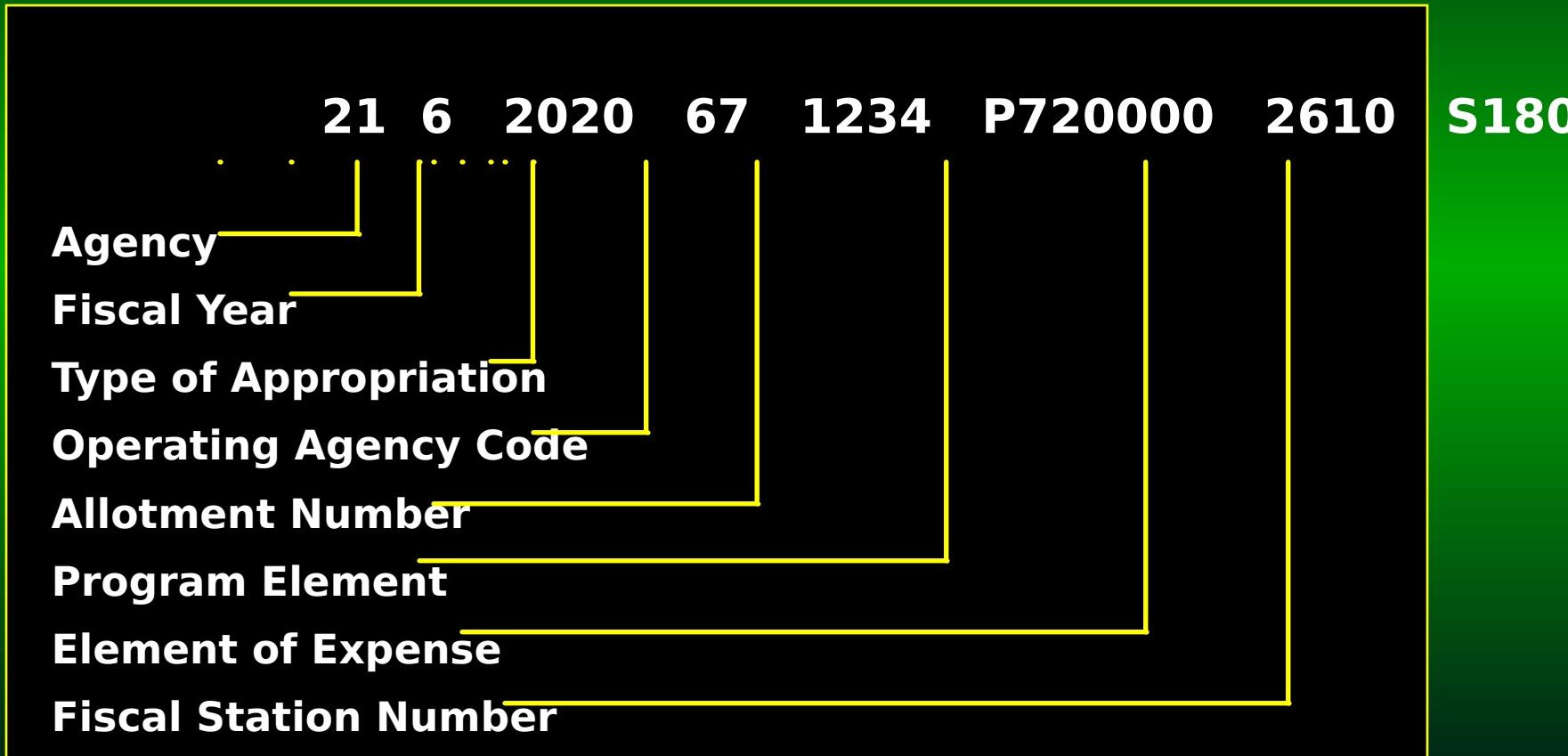
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|--|---|----------------------------|---|--|---|---------------|
| PURCHASE REQUEST AND COMMITMENT For use of this form, see AR 37-1; the proponent agency is OASA(FM). | | 1. PURCHASE INSTRUMENT NO. | 2. REQUISITION NO. | 3. DATE | PAGE OF PAGES | |
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| 14. ITEM | 15. DESCRIPTION OF SUPPLY OR SERVICES | 16. QUANTITY | 17. UNIT | 18. ESTIMATED | | |
| | | | | UNIT PRICE <i>a</i> | TOTAL COST <i>b</i> | |
| 1 | | | | | | |
| | | | | 19. ACCOUNTING CLASSIFICATION AND AMOUNT | | |
| | | | | 20. TYPED NAME AND TITLE OF CERTIFYING OFFICER | 21. SIGNATURE | 22. DATE |
| | | | | 23. DISCOUNT TERMS | | |
| | | | | 24. PURCHASE ORDER NUMBER | | |
| 25. THE FOREGOING ITEMS ARE REQUIRED NOT LATER THAN AS INDICATED ABOVE FOR THE FOLLOWING PURPOSE | | | | 26. DELIVERY REQUIREMENTS ARE MORE THAN 7 DAYS REQUIRED TO INSPECT AND ACCEPT THE REQUESTED GOODS OR SERVICES? YES <input type="checkbox"/> NO <input type="checkbox"/> | | |
| 27. TYPED NAME AND GRADE OF INITIATING OFFICER | | 28. SIGNATURE | | 29. DATE | IF YES, NUMBER OF DAYS REQUIRED: | |
| 30. TELEPHONE NUMBER | | | | | 34. TYPED NAME AND GRADE OF APPROVING OFFICER OR DESIGNEE | 35. SIGNATURE |
| 31. TYPED NAME AND GRADE OF SUPPLY OFFICER | | 32. SIGNATURE | | 33. DATE | 36. DATE | |

Accounting Classifications (Fund Cites)

\$ \$



Anatomy of a Fund Cite

21 6 2020



AGENCY

FY

**TYPE
OF
APPROPRIATION**

Use of Appropriated Funds General Limitations

- Purpose
 - Time
 - Amount



Purpose Statute

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“Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

-- 31 U.S.C. § 1301

Proper Purpose?

Legal

Proper Purpose?

\$ \$

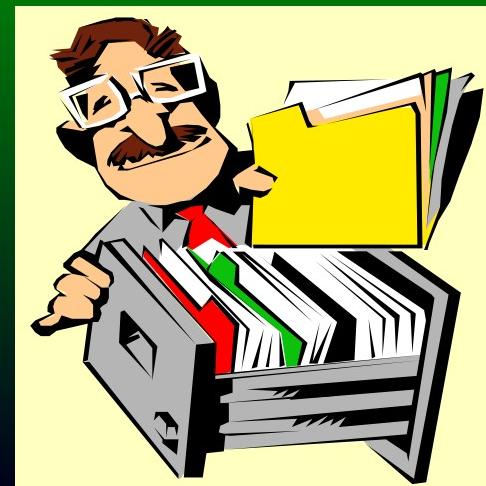
Legal

?????

Illegal

3-Part Purpose Test

- Express language, or necessary and incident to an appropriation's purpose.
- Must not be prohibited.
- Must not be provided for otherwise.



Where Do You Look?



- Legislation
 - Appropriation Act
 - Authorization Act
 - Organic Legislation
- Legislative history
- Budget Request Documents
- Agency regulations
- Case law

CHAP. XXIII.—*An Act making Appropriations for the Service of the present year.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be appropriated for the service of the present year, to be paid out of the monies which arise, either from the requisitions heretofore made upon the several states, or from the duties on impost and tonnage, the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war; a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids.

[Expired.]
Specific appropriations of money for expenses of civil list and war department;

also to discharge warrants of late board of treasury, and for pensions to invalids.

APPROVED, September 29, 1789.

Typical Appropriation Act



- Lengthy
- Complicated
- Legislated
- Regulated
- Criminalized
- Audited
- Disputed

Where Do I Find The Legislation?

Thomas Website:
<http://thomas.loc.gov/>



- [THOMAS Home](#)
- [About THOMAS](#)
- [Bills, Resolutions](#)
- [Congressional Record](#)
- [Presidential Nominations](#)

- [Treaties](#)
- [Committee Reports](#)
- [Government Resources](#)
- [For Teachers](#)
- [Help](#)

- [House of Representatives](#)
- [Senate](#)
- [U.S. Code](#)

Related Resources at the Library

- [Law Library of Congress](#)
- [Century of Lawmaking](#)
- [Continental Congress and Constitutional Convention](#)
- [Related Webcasts from the Library](#)

THOMAS

In the spirit of Thomas Jefferson, legislative information from the Library of Congress

|| Legislation in Current Congress ||

Search Bill Text

SEARCH

Word/Phrase Bill Number

Browse Bills by Sponsor

 GO **GO**

|| Find More Legislation ||

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- [Appropriations Bills](#) 
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- [Committee Reports](#)
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- [Congressional Record Latest Daily Digest](#)
- [On the House Floor Now](#)
- [Schedules, Calendars](#)

|| Learn ||



- [The Supreme Court](#)
- [From a Bill to a Law](#)
- [American Historical Documents](#)

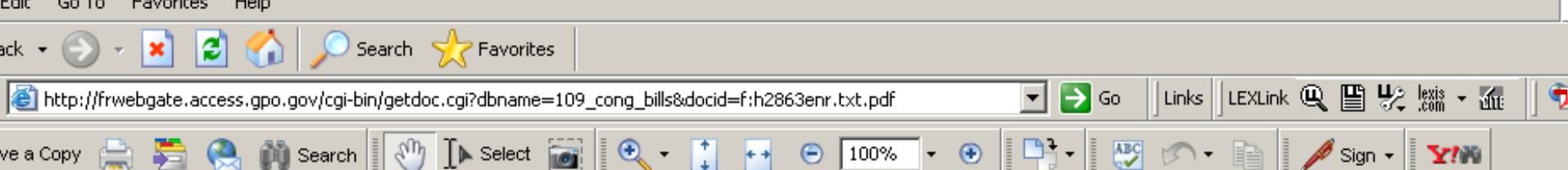
|| Features ||



- [Publishing the Declaration of Independence](#)
- Speaker:** Robin Shields
- Running Time:** 27 min.

| Appropriations | House Approvals | | | Senate Approvals | | | Conference Approvals | | | Public Law |
|--|---------------------------------|---|----------------|---------------------------------|---|------------------------------------|---|----------------|----------------|--|
| | Committee Report | Comm. Vote | House Vote | Committee Report | Comm. Vote | Senate Vote | Conf. Report | House Vote | Senate Vote | |
| 3rd Continuing Resolution H.J.Res. 75 | | | 12/17/05 vv | | | 12/17/05 uc | | | | 12/18/05 PL109-128 |
| 2nd Continuing Resolution H.J.Res. 72 | | | 11/17/05 rc | | | 11/18/05 vv | | | | 11/19/05 PL109-105 |
| 1st Continuing Resolution H.J. Res. 68 Highlights | | | 09/29/05 rc | | | 09/30/05 vv | | | | 09/30/2005 PL109-77 |
| Agriculture HR2744 | H.Rept. 109-102 | SubComm Markup 05/16/05 Highlights ----- Committee Markup 05/25/05 | 06/08/05 rc | S.Rept. 109-92 | SubComm Markup 06/21/05 Highlights ----- Committee Markup 06/23/05 | 09/22/05 rc | H.Rept. 109-255 | 10/28/05 rc | 11/03/05 rc | 11/10/2005 PL109-97 |
| Science/State/Justice/Commerce (House) HR2862 Commerce/Justice/Science (Senate) | H.Rept. 109-118 | SubComm Markup 05/24/05 Highlights ----- Committee Markup 06/07/05 Highlights | 06/16/05 rc | S.Rept. 109-88 | SubComm Markup 06/21/05 Highlights ----- Committee Markup 06/23/05 | 09/15/05 rc | H.Rept. 109-272 | 11/09/05 rc | 11/16/05 rc | 11/22/05 PL109-108 |
| Defense HR2863 | H.Rept. 109-119 | SubComm Markup 05/24/05 ----- Committee Markup 06/07/05 Highlights | 06/20/05 rc | S.Rept. 109-141 | SubComm Markup 09/26/05 Highlights ----- Committee Markup 09/28/05 Highlights | 10/07/05 rc | H.Rept. 109-359 Highlights Text (pdf) | 12/18/05 rc | 12/21/05 rc | 12/30/05 PL109-148 |
| District of Columbia S1446 | See: Trans/Treas below | | | S.Rept. 109-106 | Committee Markup 07/21/05 | S.Amdt. 2071 uc | Highlights | | | |





One Hundred Ninth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fourth day of January, two thousand and five*

An Act

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

DIVISION A

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2006, for military functions administered by the Department of Defense and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest

Most Common Fund Types

- O&M
- Military Personnel
- RDT&E
- Procurement
- MILCON

Other Procurement [Army]

FY06 Defense Appropriations Act (Pub. Law. 109-148)

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of passenger motor vehicles for replacement only; and the purchase of 14 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$255,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$4,594,031,000, to remain available for obligation until September 30, 2008.

Operation & Maintenance

[Army]

FY06 Defense Appropriations Act (Pub. Law. 109-148)

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed \$11,478,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, \$24,105,470,000: *Provided*, That of funds made available under this heading, \$2,000,000 shall be available for Fort Baker, in accordance with the terms and conditions as provided under the heading “Operation and Maintenance, Army”, in Public Law 107–117: *Provided further*, That notwithstanding any other provision of law, the Secretary of the Army may provide a grant of up to \$10,000,000 from funds made available in this or any other Department of Defense Appropriations Act to the Army Distaff Foundation.

Emergency & Extraordinary Expense Funds

1–5. Categories of emergency and extraordinary expense funds

Emergency and extraordinary expense funds are subject to the express appropriation limitation that they be used for emergencies and extraordinary expenses and for confidential military purposes (Section 127, Title 10, United States Code (10 USC 127)). The administrative categories of emergency and extraordinary expense funds are—

- a. Limitation .0012—Miscellaneous Expenses, Category A.* Official representation funds for official courtesies and other representation expenses as enumerated in this regulation.
 - b. Limitation .0014—Miscellaneous Expenses, Category B.* Miscellaneous expenses (other than for official representation) that are not provided for in other appropriations, upon specific approval of the SA. Examples of these expenses are awards for emergency rescues, witness fees for the Armed Services Board of Contract Appeals, and settlement of meritorious claims.
 - c. Limitation .0015—Criminal Investigation Activities (governed by Army Regulation (AR) 195-4).* These emergency and extraordinary expenses are in support of worldwide U.S. Army Criminal Investigation Command activities.
 - d. Limitation .0017—Intelligence Contingency Funds (governed by AR 381-141).* These emergency and extraordinary expenses are in support of worldwide intelligence activities.

R 37-47, Representation Funds of the Secretary of the Army (12 Mar 200

Official Representation Funds

- Extending official courtesies to certain authorized guests to maintain the standing and prestige of the United States.
- Gifts/mementos to certain authorized guests (Army: no gifts/mementos for DoD officials)
- Ratios of authorized guests to DoD personnel at events funded by ORF.
- It's all there in AR 37-47.

Operation & Maintenance

[Army]

FY06 Defense Appropriations Act (Pub. Law. 109-148)

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed \$11,478,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, \$24,105,470,000: *Provided*, That of funds made available under this heading, \$2,000,000 shall be available for Fort Baker, in accordance with the terms and conditions as provided under the heading “Operation and Maintenance, Army”, in Public Law 107–117: *Provided further*, That notwithstanding any other provision of law, the Secretary of the Army may provide a grant of up to \$10,000,000 from funds made available in this or any other Department of Defense Appropriations Act to the Army Distaff Foundation.

From the Office of
Congresswoman Nancy Pelosi
San Francisco, California - 8th District



Pelosi Announces San Francisco Funding in Department of Defense Appropriations Bill

June 22, 2004

Washington, D.C. -- House Democratic Leader Nancy Pelosi today announced funding for several key San Francisco priorities - including \$13 million in funding for the revitalization and remediation of the Hunters Point Naval Shipyard - in the fiscal year 2005 Defense Appropriations bill, which overwhelmingly passed the House of Representatives this afternoon.

"With the signing of the conveyance agreement earlier this spring, we are on the path to converting the shipyard into a place of promise," Pelosi said. "This funding will help bring economic opportunity to Bayview Hunters Point."

The bill approved today includes \$10 million requested by the Navy for the continued cleanup of the shipyard. Pelosi also obtained \$3 million for infrastructure improvements for the first phase of redevelopment. This spring, the Navy and the City finalized the conveyance agreement and the first parcel is expected to be transferred to the City this summer.

Pelosi also worked to obtain the following funding for San Francisco parks:

- \$2.5 million for operations and building maintenance at Fort Baker. These facility improvements are expected to leverage significant private and public investment to make the successful transformation to a sustainable national park site.
- \$2.5 million for the planning, design and restoration of the parade ground at the Presidio of San Francisco's Main Post. The parade ground will serve as the center of activity for the Presidio and its restoration is part of an effort to create a site for public education about the impact of the military on American life.
- Additionally, Pelosi fought for funding for vital medical research in the San Francisco Bay Area and nationally. The bill includes the following funding:
- \$20 million for HIV/AIDS research and prevention initiatives at the Department of Defense that will be used to monitor and prevent new HIV infections in the military, conduct research on HIV vaccines, and further the Department's HIV/AIDS prevention and education initiatives in Africa and other regions;


[Biography](#) [State Profile](#) [Constituent Services](#) [Issues](#) [News Center](#) [Events](#) [Contact Information](#)

Featured Stories

McCain Announces Bipartisan Earmark Reform Bill

Washington D.C. – Senator McCain (R-AZ), along with a group of 10 bipartisan senators, announced the introduction of the Pork-Barrel Reduction Act. The bill is designed to curtail earmarks and promote greater transparency and disclosure in the legislature.

[view full story...]

McCain Hails FCC Re-Evaluation

Washington D.C. – Senator McCain (R-AZ) issued the following statement about today's Federal Communications Commission report on the price effects of "a la carte" cable channel offerings: "I am pleased that the Commission has concluded that 'a la carte'...

Issues List

107th Congress

Agriculture

Arizona

Budget

Commerce Committee

108th Congress

Appropriations

Aviation

Campaign Finance Reform



Latest Pork Statements and Lists

Latest Press Releases

- 02/15/06** - [FEINGOLD, MCCAIN INTRODUCE BILL TO MODERNIZE THE ARMY CORPS OF ENGINEERS](#)
- 02/09/06** - [McCain Announces Bipartisan Earmark Reform Bill](#)
- 02/09/06** - [McCain Hails FCC Re-Evaluation](#)
- 02/08/06** - [McCain Statement on Earmark Reform before Senate Rules Committee](#)
- 02/08/06** - [Hearing on Indian Tribes and the Federal Election Campaign Act](#)

Quick Links

- [State of Arizona](#)
- [United States Senate](#)
- [The White House](#)
- [FirstGov.gov](#)
- [United States House of Representatives](#)
- [Library of Congress](#)
- [War in Iraq](#)

Where Do You Look?



- Legislation
 - Appropriation Act
 - Authorization Act
 - Organic Legislation
- Legislative history
- Budget Request Documents
- Agency regulations
- Case law

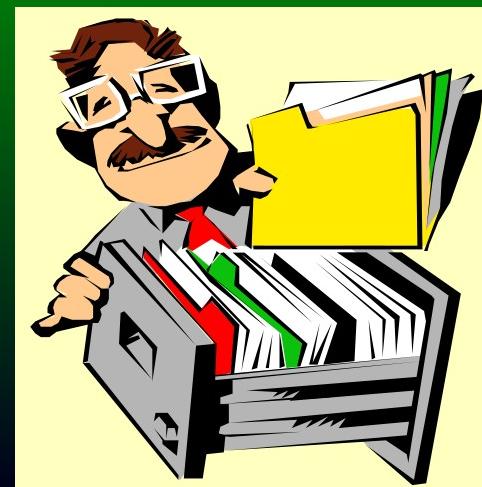
Government Accountability Office

(formerly known as the General Accounting Office)



3-Part Purpose Test

- Express language, or necessary and incident to an appropriation's purpose.
- Must not be prohibited.
- Must not be provided for otherwise.



Necessary Expense Test

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Is the expense necessary and incident (logically related) to an appropriation's purpose?



- Is it **reasonably necessary** to carry out an authorized function? Or...
- Will it **contribute materially** to the effective accomplishment of the function?

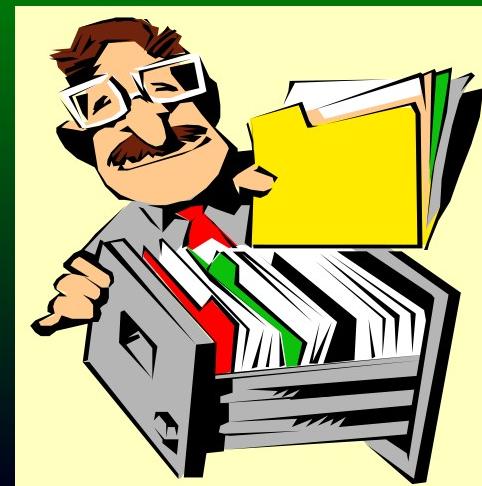
Some Red Flags



- Food
- Clothing
- Bottled Water
- Entertainment
- Gifts

3-Part Purpose Test

- Express language, or necessary and incident to an appropriation's purpose.
- Must not be prohibited.
- Must not be provided for otherwise.



Statutory Limitations

FY06 Defense Appropriations Act (Pub. Law. 109-148)

SEC. 8069. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

Statutory Limitations

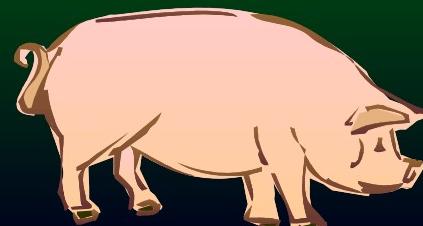
FY06 Defense Appropriations Act (Pub. Law. 109-148)

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

Statutory Limitations

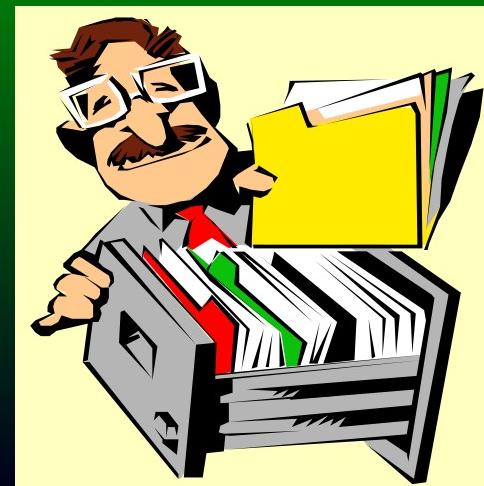
FY06 Defense Appropriations Act (Pub. Law. 109-148)

SEC. 8064. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.



3-Part Purpose Test

- Express language, or necessary and incident to an appropriation's purpose.
- Must not be prohibited.
- Must not be provided for otherwise.



Otherwise Provided For?

- If two or more appropriations are available, you must use the more specific of the two.
- If neither is more specific, agency gets to choose, but is then bound by that choice.

Procurement [Aircraft -- Army]

FY06 Defense Appropriations Act (Pub. Law. 109-148)

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$2,653,280,000, to remain available for obligation until September 30, 2008: *Provided*, That \$75,000,000 of the funds provided in this paragraph are available only for the purpose of acquiring four (4) HH-60L medical evacuation variant Blackhawk helicopters for the Army Reserve: *Provided further*, That three (3) UH-60 Blackhawk helicopters in addition to those referred to in the preceding proviso shall be available only for the Army Reserve.

National Guard and Reserve Equipment

FY06 Defense Appropriations Act (Pub. Law. 109-148)

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces, \$180,000,000, to remain available for obligation until September 30, 2008: *Provided*, That the Chiefs of the Reserve and National Guard components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective Reserve or National Guard component.



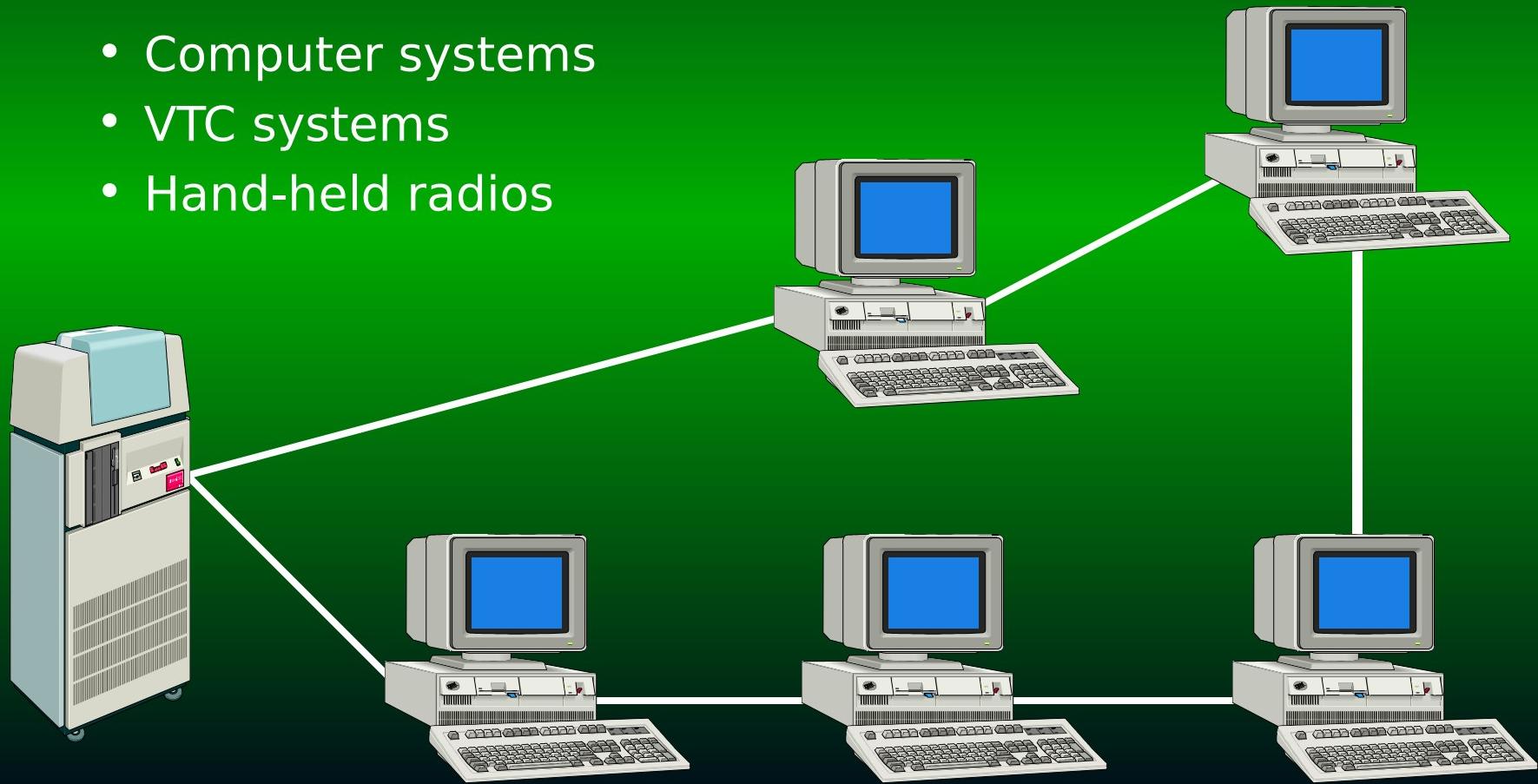
Expense/Investment Threshold

SEC. 8036. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than \$250,000.

- Expense v. Investment
 - Expense/Investment Threshold: \$250,000
 - Systems concept

Expense/Investment Threshold

- Computer systems
 - VTC systems
 - Hand-held radios



Military Construction

- Specified MILCON: > \$1.5M
 - Unspecified MILCON: \$750K to \$1.5M
 - O&M: up to \$750K



- * If solely to correct a life, health, or safety-threatening condition, these limits are doubled.

Military Construction

- Project splitting
 - Maintenance and repair don't count.
 - Breaking the \$750,000 O&M cap.



Operational Construction

Old DA OGC guidance (prior to 16 April 2003):

- O&M funds for structures that are “clearly intended to meet a temporary operational requirement” to facilitate combat operations.

Congress (Emergency Wartime Supplemental FY03):

- What's up with that? Construction > \$1.5M is funded with MILCON.
 - For military construction overseas (and oh by the way -- *construction that is temporary in nature is still construction*), transfer funds from supplemental appropriation into MILCON and use contingency construction authority under 10 U.S.C. § 2804.

Congress (later in 2003 -- Emergency Supplemental FY04):

- Ok, you can use O&M for temporary military construction, under certain conditions.

Operational Construction

Requirements to use this authority:

- Needed to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of OIF or the Global War on Terrorism;
 - The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence;
 - United States has no intention of using the construction after the operational requirements have been satisfied; and
 - Minimum necessary to accomplish the temporary operational requirements.

Use of Appropriated Funds General Limitations

- Purpose
 - Time
 - Amount



Limitations as to Time

Funds must be obligated during their period of availability, and the obligation must be for a “bona fide need” of that period.



“Currents funds for current needs.”

Fund Types

- O&M – 1 yr
- Military Personnel – 1 yr
- RDT&E – 2 yrs
- Procurement – 3 yrs
- MILCON – 5 yrs



Lifespan of Funds

POA

5 years

Current

Expired

Closed

Bona Fide Need Supplies

General rule:

Supplies are the bona fide need of the period in which they are used.

Exceptions:

- Stock level exception
- Lead time exception

Bona Fide Need Supplies

General Rule



Bona Fide Need Supplies

Stock Level Exception



Bona Fide Need Supplies

Lead Time Exception



Bona Fide Need Services

General Rule: Services are the BFN of the FY in which we receive the services.

But: Severable or Nonseverable services?

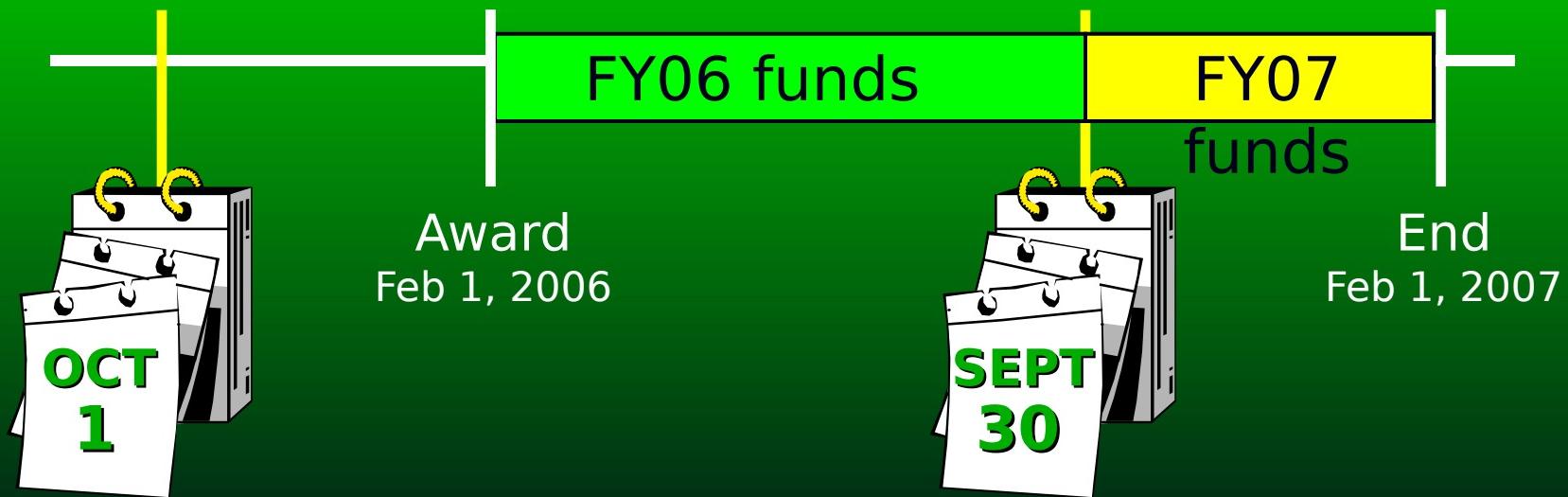
Bona Fide Need Nonseverable Services

Nonseverable Services: Entire undertaking is the bona fide need of the FY of contract award.



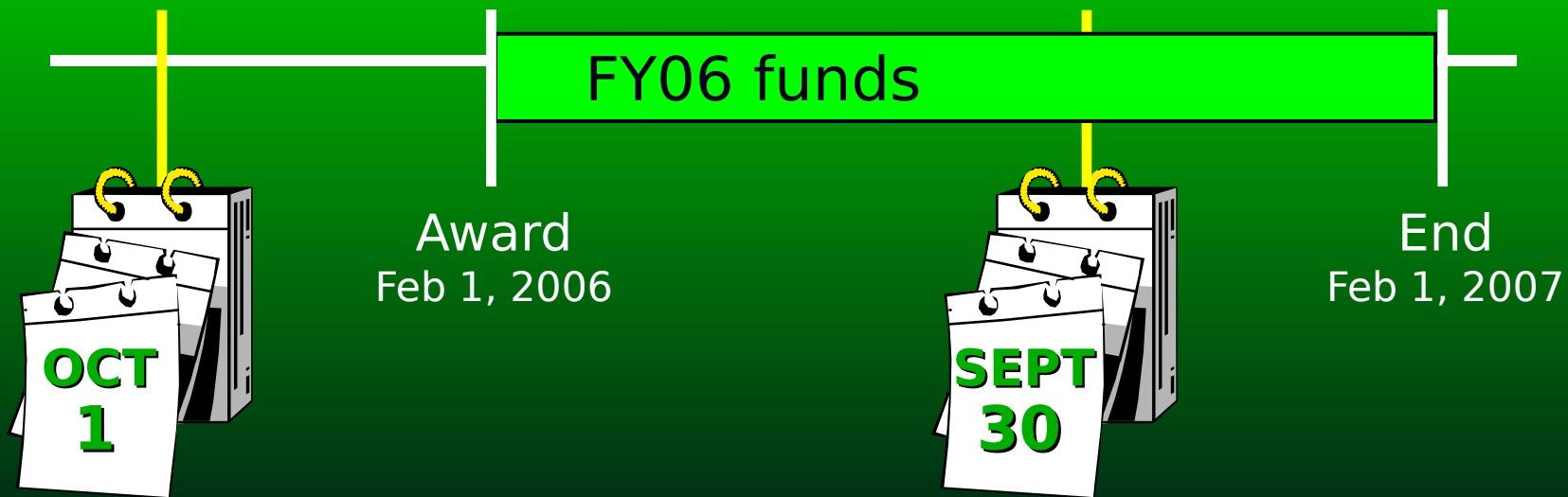
Bona Fide Need Severable Services

Severable services are bona fide needs of the FY in which the services are performed.



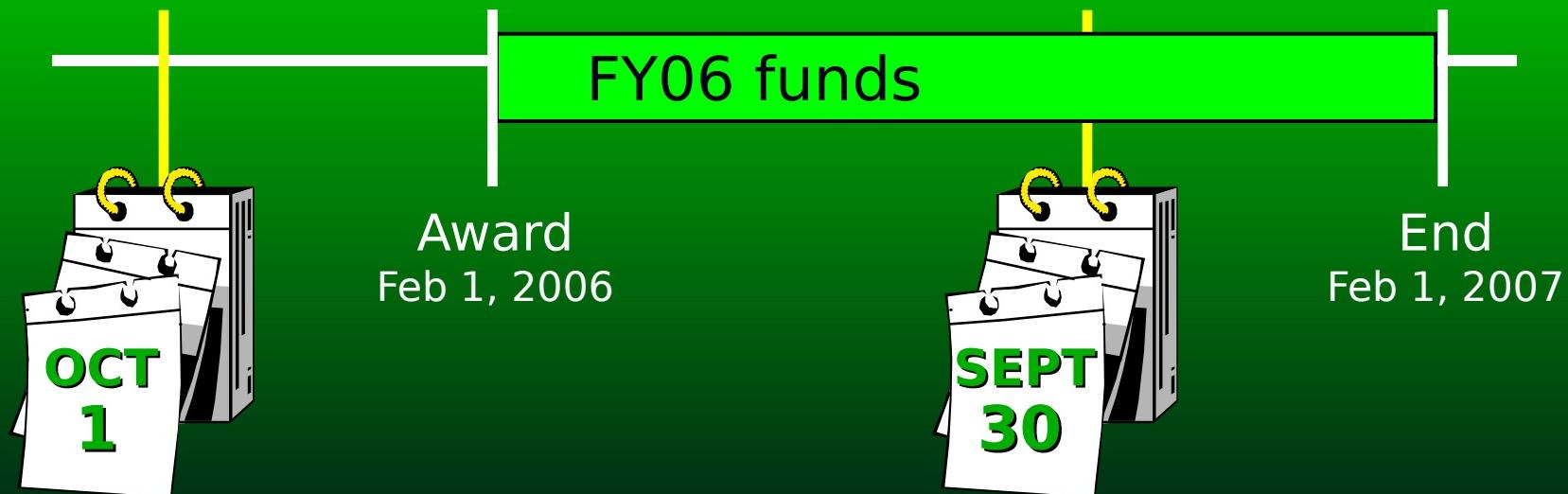
Bona Fide Need Severable Services

Exception: 10 U.S.C. § 2410a allows total funding of up to 12 months of severable services starting at any time of the year.



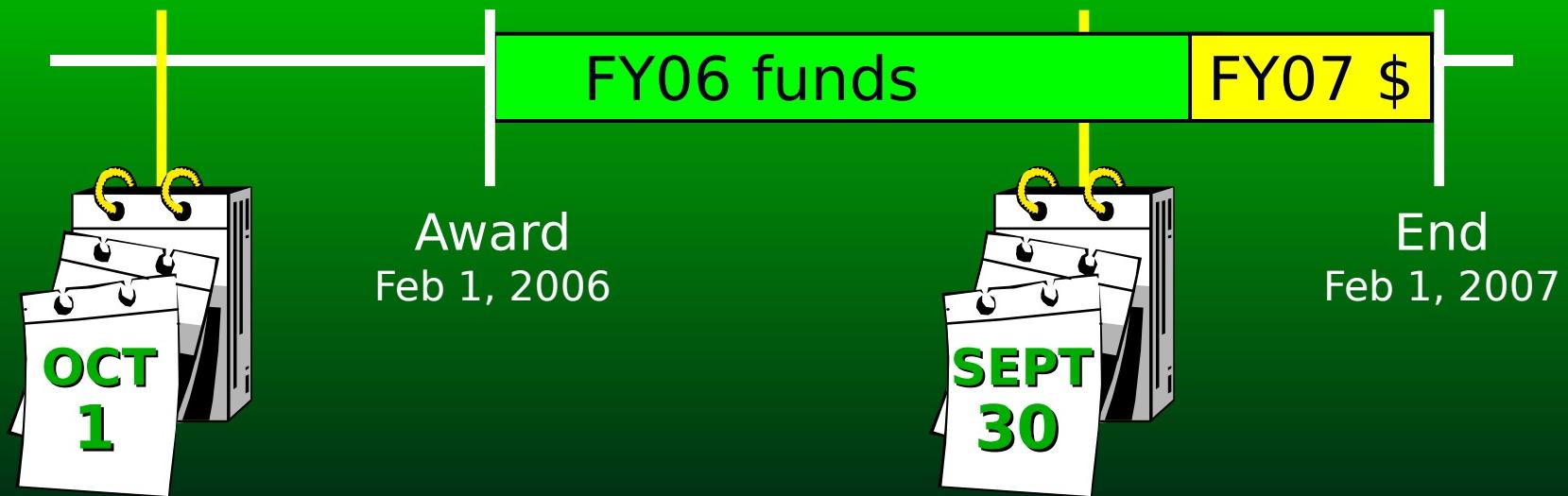
New (?) Contracting Issue

What if you use 10 U.S.C. § 2410a to do a severable services contract crossing fiscal years using FY06 money . . .



New (?) Contracting Issue

. . . but then before the period of performance ends, you start using FY07 money?



Use of Appropriated Funds General Limitations

- Purpose
 - Time
 - Amount



The Antideficiency Act

- Obligating in excess of an appropriation (or apportionment or formal subdivision).
- Obligating in advance of an appropriation.
- Accepting voluntary service



Administrative Subdivisions

31 U.S.C. §§ 1514, 1517

- Further divides apportionment
- Restrict amount of obligations and expenditures
- Fixes responsibility

Administrative Subdivisions

31 U.S.C. §§ 1514, 1517

Formal

- Allotment
 - Allocation
-

Informal

- Allowance
- Target

"In Excess Of"

31 U.S.C. § 1341(a)(1)(A)

- Amount available in appropriation (or apportionment or formal subdivision)
- Amounts authorized for a purpose
- Statutory restrictions / other limits

"In Excess Of"

31 U.S.C. § 1341(a)(1)(A)

\$ \$

Statutory restrictions / other limits

SEC. 8069. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

"In Excess Of"

31 U.S.C. § 1341(a)(1)(A)

\$ \$

Statutory restrictions / other limits

(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

"In Excess Of"

31 U.S.C. § 1341(a)(1)(A)

Statutory restrictions / other limits

SEC. 8021. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 30 months after initiation of such study for a multi-function activity.

"In Advance Of"

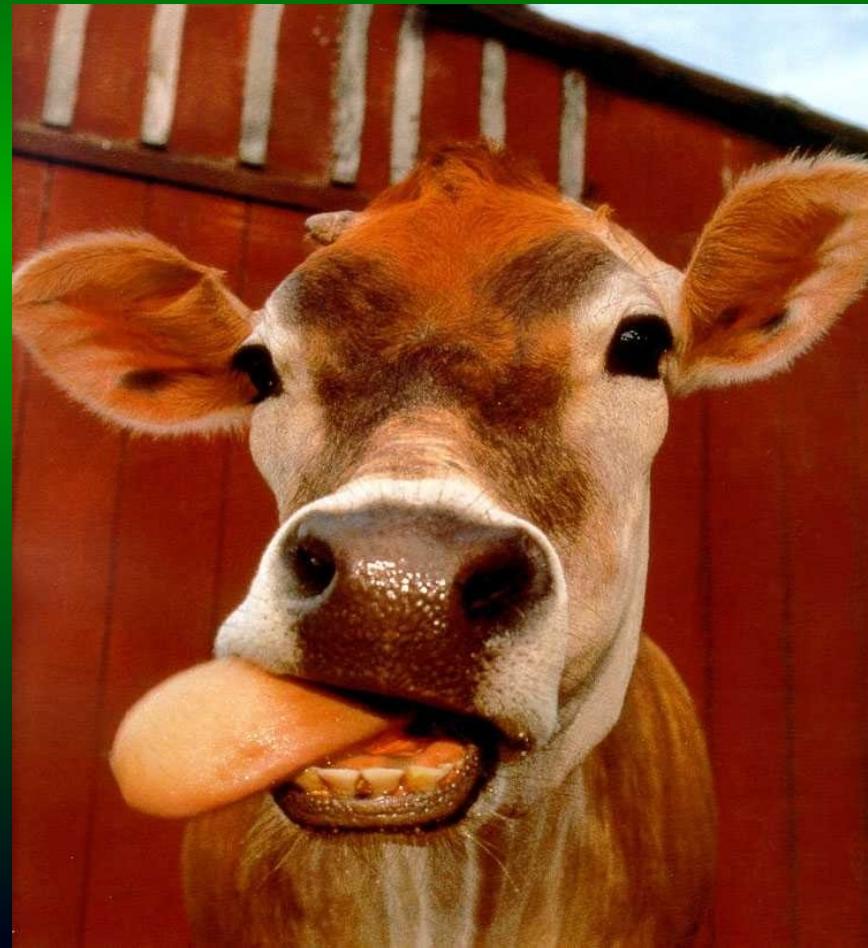
31 U.S.C. § 1341(a)(1)(B)

- Obligating next FY's funds
- Obligating during a funding gap
- Multi-year contracts using 1-year funds

Exceptions

to 31 U.S.C. § 1341

- Feed and Forage Act
(41 U.S.C. § 11)
 - Certain special multiyear contracts for continuing services that have substantial start-up costs
(10 U.S.C. § 2306c)
(FAR Subpart 17.1)



"Non-Exception"

to 31 U.S.C. § 1341

FAR 32.703-2

Clause at 52.232-18



PTA Violation = ADA Violation?

\$ \$

PTA violation not an ADA violation if:

- Proper funds were available at time of obligation,
- Proper funds available at time of correction, and
- Proper funds available continuously in-between.



Voluntary Services

31 U.S.C. § 1342

May not accept voluntary services except:

- Authorized by law
 - Family support activities, student intern, etc.
 - Emergencies
 - Imminent threat to life or property
 - Gratuitous services
 - Agrees in writing to no compensation
 - But: can't waive a statutory entitlement
 - And watch out for improper augmentation.

§ 1588. Authority to accept certain voluntary services

How Current is This?

(a) Authority To Accept Services.— Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

- (1) Voluntary medical services, dental services, nursing services, or other health-care related services.
- (2) Voluntary services to be provided for a museum or a natural resources program.
- (3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:
 - (A) Family support programs.
 - (B) Child development and youth services programs.
 - (C) Library and education programs.
 - (D) Religious programs.
 - (E) Housing referral programs.
 - (F) Programs providing employment assistance to spouses of such members.
 - (G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.
- (4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.
- (5) Legal services voluntarily provided as legal assistance under section 1044 of this title.
- (6) Voluntary services as a proctor for administration to secondary school students of the test known as the "Armed Services Vocational Aptitude Battery".

Search this title:

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Department of Defense

INSTRUCTION

NUMBER 1100.21

March 11, 2002

Incorporating Change 1, December 26, 2002

ASD(FMP)

SUBJECT: Voluntary Services in the Department of Defense

References: (a) Sections 1044, 1054, 1491, 1588, and 2733 of title 10, United States Code

- (b) [DoD Directive 1015.1](#), "Establishment, Management and Control of Nonappropriated Fund Instrumentalities," August 19, 1981
- (c) [DoD 5400.11-R](#), "Department of Defense Privacy Program," August 1983
- (d) [DoD Instruction 1402.5](#), "Criminal History Background Checks on Individuals in Child Care Services," January 19, 1993
- (e) through (i), see [enclosure 1](#)

1. PURPOSE

This Instruction:

- 1.1. Implements policies, responsibilities, and procedures for the acceptance and use of voluntary services in Department of Defense programs, as authorized by 10 U.S.C. 1588 ([reference \(a\)](#)).

- 1.2. Describes the conditions under which voluntary services may be accepted, the

Voluntary Services

31 U.S.C. § 1342

May not accept voluntary services except:

- Authorized by law
 - Family support activities, student intern, etc.
 - Emergencies
 - Imminent threat to life or property
 - Gratuitous services
 - Agrees in writing to no compensation
 - But: can't waive a statutory entitlement
 - And watch out for improper augmentation.

Augmentation

Augmenting a pot of money...

- from other pots of money, or
- from any other sources

...will make Congress really mad, and can violate Purpose Statute, Constitution, and Miscellaneous Receipts Statute.

Miscellaneous Receipts

31 U.S.C. § 3302(b)

- “Except as . . . [otherwise provided] . . . an official or agent of the government receiving money for the government from any source shall deposit the money in the Treasury as soon as practical without any deduction for any charge or claim.”
 - If your command comes into some extra money, it probably belongs to the Treasury.

Voluntary Creditors

- Agency may not reimburse a voluntary creditor
- Exception (3-part test):
 - Underlying expenditure was authorized;
 - Public necessity (failure to act would have resulted in disruption of a relevant agency activity); and
 - Agency could have ratified and paid the vendor if the voluntary creditor hadn't already paid him.

Ratification

Ratification: The act of approving an unauthorized commitment, by someone who has the authority to do so.

Unauthorized Commitment: An agreement that is not binding on the government solely because it was made by someone who didn't have authority to obligate the government.

Ratification

Unauthorized commitment can be ratified if:

- Goods or services of value received.
- KO has the authority to obligate the amount of the commitment, and could have obligated at the time of the unauthorized commitment.
- The resulting contract would have been otherwise proper (legal, funds available).
- Price is reasonable and fair

The Antideficiency Act

- Flash Report to ASA (FM&C)
 - Investigations
 - Determining responsibility
 - Report to SECDEF, OMB, President, and Congress.
 - And to GAO.

**31 USC § 1351
(as amended by Consolidated Appropriations Act, 2005)**





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Address http://www.gao.gov/ada/antideficiencydb.pdf

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ANTIDEFICIENCY ACT REPORTING DATABASE

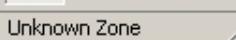
FY 2005

| GAO No. | Agency No. | Agency | Account(s) | Date Reported | Date of Violation | Amount | Type of Violation | Description | Remedial Action Taken |
|---------------------------|------------|------------------------|------------|---------------|--------------------|--------------|-------------------|--|--|
| ADA 10-05 | 02-01 | Department of the Army | O&M Army | 5/31/2005 | 9/30/1998 | \$850,802.80 | 31 USC 1341(a) | Obligation of funds under IDIQ contract for office renovations and a work plan for which appropriated funds were not available. This resulted from a violation of 10 USC 2805(b), requiring advance Secretarial approval for minor construction contracts. | Violation corrected when additional funding that was available under the Military Construction, Army Appropriation was transferred to the Operation and Maintenance, Army Appropriation. The district developed more detailed operating procedures for awarding construction contracts. The district also held a "lessons-learned" meeting with all IDIQ contracting personnel to address shortcomings and new procedures. |
| ADA 11-05 | 02-03 | Department of the Army | O&M Army | 6/7/2005 | 11/6/1998-2/3/2000 | \$2,827.80 | 31 USC 1341(a) | Improper purchases of bottled drinking water for which appropriated funds were not available. This resulted from a violation of the Purpose Statute, 31 USC 1301. | Guidance was issued regarding purchase and use of bottled water. Fiscal law training was made mandatory for all fund certifiers. A refresher fiscal law training course was given at a management conference. |

14.00 x 8.50 in

| | 5 of 7 | | |

|



Done



**UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON DC 20301-1100**

JUN 7 200

COMPTROLLER

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President

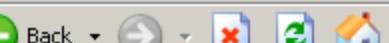
This letter is to report a violation of the Antideficiency Act, as required by Title 31 United States Code, section 1351.

The report of the Antideficiency Act by the Department of the Army, is case number 02-03. The violation totaling \$2,837.80 occurred in fiscal years 1997 through 2000, Operation and Maintenance, Army appropriation. The violation occurred when personnel associated with the United States Army Intelligence and Security Command, Fort Belvoir, Virginia, improperly used appropriated funds to purchase bottled water. Because bottled water is considered a personal expense, the use of appropriated funds for an incorrect purpose was a violation of Title 31, United States Code subsection 1301(a) that resulted in a violation of Title 31, United States Code subsection 1341(a)(1)(A).

Enclosed is a report from the Deputy Assistant Secretary of the Army (Financial Operations). The following individual was named responsible for the violation.

Major Susan Bendik

The Army determined that no disciplinary action should be taken against the



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VOLUME 14: ADMINISTRATIVE CONTROL OF FUNDS AND ANTIDEFICIENCY ACT VIOLATIONS

October 2004

- Policy Memorandum
- Expanded Table of Contents
- Archived Sections

| Chapter | Title | Issue Date |
|------------|--|------------|
| | COVER SHEET | |
| | FOREWORD | AUG 1995 |
| | INTRODUCTION | AUG 1995 |
| | LEGAL REFERENCES (FORMERLY APPENDICES B-E) | OCT 2002 |
| 1 | ADMINISTRATIVE CONTROL OF APPROPRIATIONS | OCT 2002 |
| 2 | VIOLATIONS OF THE ANTIDEFICIENCY ACT | OCT 2002 |
| 3 | PRELIMINARY REVIEWS OF POTENTIAL VIOLATIONS | APR 2003 |
| 4 | BEGINNING A FORMAL INVESTIGATION | OCT 2002 |
| 5 | CONDUCTING INVESTIGATIONS | OCT 2002 |
| 6 | STATUS REPORTS ON INVESTIGATIONS | OCT 2002 |
| 7 | REPORTS OF 'VIOLATIONS' AND 'NO VIOLATION' • ENCLOSURE 7-1, CHECKLIST FOR FINAL SUMMARY REPORT OF VIOLATION | AUG 1995 |
| 8 | TRAINING | OCT 2002 |
| 9 | DISCIPLINARY ACTION | OCT 2002 |
| 10 | VIOLATIONS--CAUSES, PREVENTION, AND CORRECTION | OCT 2004 |
| APPENDIX A | PROCEDURES FOR THE ADMINISTRATIVE CONTROL OF APPROPRIATIONS | AUG 1995 |

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See

Antideficiency Act (ADA)

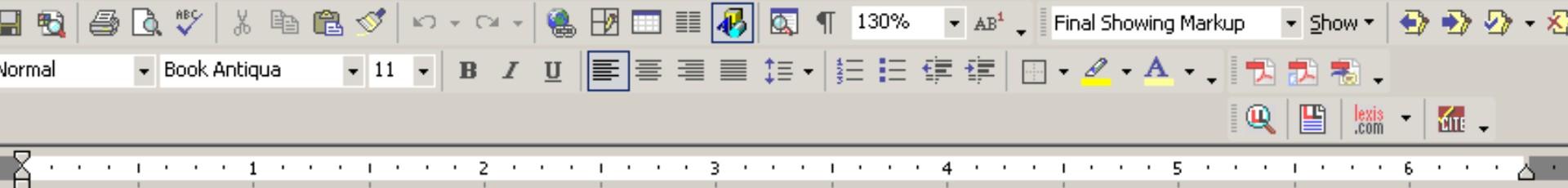


Following are Antideficiency Act documentation and links that are available



- [Antideficiency Act \(ADA\) Violations and You ... May 1996](#)
- [Antideficiency Act \(ADA\) Investigation Manual ... January 1998](#)
- [Antideficiency Act \(ADA\) Related Links ... October 1998](#)





ANTIDEFICIENCY ACT VIOLATIONS AND YOU...

A primer for Army personnel

MAY 1996

INTRODUCTION

The document that follows is provided for your use in learning more about the Antideficiency Act (ADA) and how it can affect you and your organization. This information is broken out by topic, i.e., prevention, consequences, reporting, and advice from previous investigating officers. This document is not intended to be all inclusive as "everything you wanted to know about the ADA, but were afraid to ask," however, it is a handy reference to review and guide you toward further detail, as required.

Conclusion

- Expenditures only proper when authorized by Congress.
- Congress controls:
 - Purpose
 - Time
 - Amount
- Usually there is a proper way to purchase something.